

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

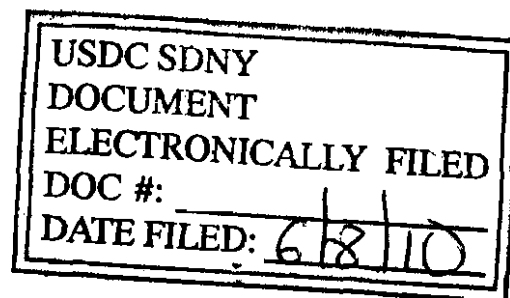
09 Cr. 479 (RWS)

SENTENCING  
OPINION

RICHARD ROJAS

Defendant.

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**Sweet, D.J.**

On March 2, 2010, Richard Rojas ("Rojas" or the "Defendant") allocuted to, one count of conspiracy to commit access device fraud, one count of conspiracy to possess access device-making equipment, and one count of conspiracy to effect transactions with one or more access devices issued to another person to receive in excess of \$1,000, in violation of 18 U.S.C. §§ 1029(a)(1), (4), (5), (b)(1) and 2. For the reasons set forth below, Rojas will be sentenced to three years' probation with a special condition of five months' home confinement. He also will be required to pay a special assessment of \$300. An order of restitution shall be delayed for up to 90 days pending receipt of necessary identifying information from the Government.

**Prior Proceedings**

Indictment 09 Cr 479 (RWS) was filed in the Southern District of New York on May 11, 2010. Count One charges that from January 2009 through February 2009, in the Southern District of New York and elsewhere, Defendant produced and sole counterfeit credit cards. Count Two charges that from January 2009 through February 2009, in the Southern District of New York and elsewhere, Defendant possessed devices used to make credit cards. Count Three charges that from January 2009 through February 2009, in the Southern District and elsewhere, Defendant used another individual's credit card account to obtain goods in amounts totaling more than \$1,000, without authorization from the account holder.<sup>1</sup>

Defendant's sentencing is currently scheduled for June 8, 2010.

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<sup>1</sup> Count Four, to which Rojas has not entered a plea and which the PSR does not incorporate in determining the proposed sentence, charged that he possessed and used names and account numbers of the other individuals to commit access device fraud as charged in Count One of the Indictment.

### **The Sentencing Framework**

In accordance with the Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005), and the Second Circuit's decision in United States v. Crosby, 397 F.3d 103 (2d Cir. 2005), the sentence to be imposed was reached through consideration of all of the factors identified in 18 U.S.C. § 3553(a), including the advisory Sentencing Guidelines (the "Guidelines") established by the United States Sentencing Commission. As the Supreme Court explained in Gall v. United States, 552 U.S. 38 (2007):

[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark. The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. In so doing, he may not presume that the Guidelines range is reasonable. He must make an individualized assessment based on the facts presented.

Id. at 49-50 (internal citation and footnote omitted). Thus, in addition to analysis of the Guidelines, the sentence imposed here results from consideration of:

- (1) the nature and circumstances of the offense

and the history and characteristics of the defendant;

(2) the need for the sentence imposed-

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for-

- (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines . . . ;

(5) any pertinent policy statement . . . [issued by the Sentencing Commission];

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a). A sentencing judge is permitted to find all the facts appropriate for determining a sentence, whether that sentence is a so-called Guidelines sentence or not. See Crosby, 397 F.3d at 111.

In light of the Court's statutory responsibility "to 'impose a sentence sufficient, but not greater than necessary' to accomplish the goals of sentencing," Kimbrough v. United States, 552 U.S. 85, 570 (2007) (quoting 18 U.S.C. § 3553(a)), and having considered the Guidelines and all of the factors set forth in § 3553(a), it is determined that a Guidelines sentence is warranted in the instant case.

#### **The Defendant**

The Court adopts the facts set forth in the Probation Department's Presentence Investigation Report ("PSR") with respect to Rojas's personal and family history.

#### **The Offense Conduct**

The following description draws on the PSR. The specific facts of the underlying conduct are adopted as set forth in that report.

This case originated with a telephone call on February 18, 2009, between agents and the case agent regarding information in reference to a possible counterfeit manufacturing plant

located in Bronx, New York. Another agent advised the case agent that on February 18, 2009, U.S. Customs and Border Protection ("CBP") officers at the Newark International Airport ("Newark"), New Jersey, intercepted a UPS package that was being sent to Daisy Velez ("Velez"), Defendant's girlfriend, at an address in the Bronx. The package contained 400 silver and gold bank credit cards complete with magnetic stripe and signature block. The agent advised that the UPS package was shipped from DigitalID, a company located in Stockport, UK, that manufactured blank credit cards and printers.

Continuing on February 18, 2009, an agent obtained the United Parcel Service ("UPS") package from a CBP officer at Newark and subsequently turned over chain of custody of the package to the case agent.

On the same date, the case agent conducted record check for the target address. AutoTrack and Lexis Nexis checks revealed Velez and Rojas as being the registered occupants of the address.

On the same date, the case agent drove by the target address and noticed a Black Lincoln Navigator parked in front of the residence; records checks indicated that the vehicle is

registered to Rojas.

Continuing on the same date, the case agent spoke to a UPS Fraud Investigator. The UPS Fraud Investigator manipulated the UPS online tracking system to show the package as being in-transit and rescheduled for delivery on the next business day. The UPS Fraud Investigator manipulated the UPS online tracking system to show the package as being in-transit and rescheduled for delivery on the next business day. The UPS Fraud Investigator ran a database query for recent packages shipped to the target address and discovered that a shipment was delivered to Velez at the same address to which the intercepted package was being sent on February 6, 2009. The UPS Fraud Investigator advised the case agent that the package was shipped from Dingword Inc. located in Toronto, Canada.

On February 19, 2009, the case agent discovered via internet searches that Dingword Inc. is a company that sells printers, embossers, and various other products used to manufacture credit cards.

Continuing on the same date, the case agent contacted the owner of Dingword Inc. The owner verified that he shipped a hot foil stamping machine to Velez at the target address.

Continuing on the same date, an agent spoke with an Ebay/Paypal Fraud Investigator. The Ebay/Paypal Fraud Investigator performed a database query and discovered that numerous items related to credit card manufacturing and access device fraud had been shipped to Velez and Rojas at the target address in the past several weeks.

Continuing on the same date, a federal search warrant was authorized to be drafted for the target residence, located at the target address.

On February 20, 2009, federal agents executed a search warrant for the target residence in the Bronx. Both Rojas and Velez were present in the residence at the time the search warrant was served. Rojas voluntarily signed a consent to search his residence, electronic media, and vehicles.

Continuing on the same date, Rojas was interviewed by agents. Rojas admitted to being involved in counterfeit credit card manufacturing and stated that the products he used to make counterfeit credit cards were located at his friend's house, from which he volunteered to retrieve the manufacturing tools and did so, turning them over to the agents. The following items were



turned over to the agents: one magnetic stripe writer/reader/encoder, one card embosser, one computer mini-tower, one credit card printing machine, twenty-nine counterfeit credit cards, approximately eighteen hundred blank PVC plastic cards, one hot foil stamping machine, and three rolls of hot tinting foil. The items uncovered in the search of the targets' residence and vehicle, along with the items voluntarily turned over to agents constitute evidence, fruits, and instrumentalities of fraud and related activity in connection with access device fraud. The search resulted in a counterfeit access device manufacturing plant.

Rojas provided a full written statement, on a form that had Miranda warnings written on it, confessing to his involvement, and ownership of the counterfeit credit card manufacturing plant. Additionally, he described other individuals involved in the scheme to manufacture and encode counterfeit credit cards.

In the written statement, Rojas stated that a co-conspirator ("CC-1") introduced him to other co-conspirators ("CC-2" and "CC-3"), sometime in January. CC-2 wanted Rojas to make counterfeit credit cards for him. CC-2 agreed to pay Rojas \$200.00 for each card. CC-2 and Rojas would meet at a Getty Gas

station located at the corner of Bronx River Avenue and Westchester Avenue, Bronx, New York. Rojas stated that CC-2 would give him the last four digits he wanted embossed on the counterfeit credit cards. Rojas would then take the numbers back to his house and print and emboss the cards. He would then meet up with CC-2 at the same Getty gas station, and CC-2 would pay him for the cards. Rojas admitted that he has made approximately 10-15 cards for CC-2. Rojas stated that one of the individuals who was present with CC-2 had a card writer and encoded the numbers on the cards.

Continuing on February 20, 2009, the case agent inventories all evidence collected as a result of the search warrant, and consent searches. Several of the counterfeit credit cards contained fraudulently encoded account numbers. The case agent contacted a CitiGroup Fraud Investigator. The CitiGroup Fraud Investigator indicated that CitiBank Account number 4271-3829-0953-1655, issued to Richard J. Glosman had been reported as closed due to fraudulent activity. The CitiGroup Fraud Investigator stated that there were approximately \$4,500 in fraud loss reported on the card and provided a copy of all fraudulent transactions.

The case agent discussed the fraudulent transactions

with Rojas who voluntarily admitted making most of the fraudulent charges. Rojas stated that he used his credit card reader/writer to capture one of the encoded numbers that CC-2 gave to him and then transferred it to a counterfeit card that he made for himself. Rojas then went out and used the card for fraudulent financial gain at several stores in the New York area.

Additionally, Capital One Account number 4003-4470-0073-7397 was found to be encoded on one of the fraudulent cards made by Rojas. The case agent contacted a Capital One Fraud Investigator. The Capital One Fraud Investigator informed the agent that the account was closed due to fraudulent activity, and there was one fraudulent charge for \$1,956.15 that appeared on the card from a purchase made at Circuit City in New York, New York. Rojas was questioned as to the fraudulent charge made using the Capital One Account and he denied making the purchase.

On February 23, 2009, subpoenas were requested for Rojas's Ebay account information and CC-2's Sprint/Nextel phone records.

On February 24, 2009, the case agent reviewed the fraudulent charges made by Rojas using the stolen CitiBank Account number. One of the attempted fraudulent charges was for

an airline ticket issued to an individual through JetBlue Airways. A representative from JetBlue Airways Legal Department provided the agent with all reservation records associated with the fraudulent credit card transaction along with three other credit card numbers that were fraudulently used by the individual in an attempt to purchase airline tickets. One of the attempted credit card transactions was made using American Express ("AmEx") Account number 3715-6671870-7004. The case agent contacted an AmEx Fraud Investigator who informed that agent that the account was closed due to fraudulent activity.

Continuing on the same day, the case agent contacted a regional investigator from Chase Bank who stated that Chase Account number 5401-6830-3451-5954, which was used in an attempt by the individual to purchase a JetBlue Airline ticket, was closed due to fraudulent activity and that there were two other fraudulent transactions associated with this account number that occurred at El Aguila Bar in Bronx, New York, and Macy's Herald Square in New York, New York. Rojas was questioned as to the fraudulent transactions and denied making the purchases.

Rojas is being held accountable for a loss amount of between \$30,000 and \$70,000.

**The Relevant Statutory Provisions**

For Count One, there is a maximum term of imprisonment of five years, pursuant to 18 U.S.C. §§ 1029(a)(1), (b)(1), and (b)(2). For Counts Two and Three, there is a maximum term of imprisonment of seven-and-a-half years per count, pursuant to 18 U.S.C. §§ 1029(a)(4), (a)(5), (b)(1) and (b)(2). If a term of imprisonment is imposed, the Court may impose a term of supervised release of not more than three years, pursuant to 18 U.S.C. § 3583(b)(2).

Rojas is eligible for not less than one nor more than five years' probation by statute, pursuant to 18 U.S.C. § 3561(c)(1).

The maximum fine is \$250,000 pursuant to 18 U.S.C. § 3571. Pursuant to 18 U.S.C. § 3013, a special assessment of \$100 per count is mandatory.

Full restitution to the victims is required under 18 U.S.C. § 3663A and 18 U.S.C. 3664. At time of writing, restitution information was still being awaited.

As a result of committing the offenses alleged in Counts One, Two, and Three of the Indictment, Rojas shall forfeit to the United States, pursuant to 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3), all property real and personal, involved in the offense or traceable to such property. If any of the property subject to forfeiture cannot be located upon the exercise of due diligence, has been transferred to a third party, has been placed beyond the Court's jurisdiction, has been substantially diminished in value, or has been commingled with other property, it is the intention of the Government, pursuant to 18 U.S.C. § 982(b), to seek forfeiture of any other property of the Defendant up to the value of the forfeitable property.

### **The Guidelines**

The November 1, 2009 edition of the United States Sentencing Commission Guidelines Manual has been used in this case, pursuant to § 1B1.11(a).

Counts One, Two, and Three are grouped together, pursuant to U.S.S.G. § 3D1.2(d), because the offense level is determined largely on the basis of the total amount of harm or loss or some other measure of aggregate harm, and because the offense behavior is ongoing and continuous in nature and the

offense guideline is written to cover such behavior.

Because Counts One, Two, and Three are grouped pursuant to U.S.S.G. § 3D1.2(d), the offense level applicable to the group is the offense level corresponding to the aggregated quantity of loss. See U.S.S.G. § 3D1.3(b).

The sentencing guideline applicable to the offenses charged in Counts One, Two and Three is U.S.S.G. § 2B1.1.

Accordingly, the applicable offense level is 6.

Pursuant to U.S.S.G. §2B1.1(b)(1)(D), because the intended loss amount is more than \$30,000 but not more than \$70,000, the offense level is increased by six levels. See § 2B1.1, Application Note 3(F)(i).

Pursuant to U.S.S.G. § 2B1.1(b)(10), because the offenses involved the possession or use of device-making equipment; the production or trafficking of an unauthorized access device or counterfeit access device; the unauthorized transfer or use of any means of identification unlawfully to produce or obtain any other means of identification; and the possession of five or more means of identification that

unlawfully were produced from, or obtained by the use of, another means of identification, the offense level is increased by two levels.

The Defendant has clearly demonstrated acceptance of his responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction is warranted, pursuant to U.S.S.G. § 3E1.1(a).

Rojas has no known criminal convictions. Therefore, he has zero criminal history points and a Criminal History Category of I.

Based on a total offense level of 12 and a Criminal History Category of I, the Guidelines range for imprisonment is 10 to 16 months.

The Guidelines range for a term of supervised release is at least two years but not more than three years, pursuant to § 5D1.2(a)(2). If a sentence of imprisonment of one year or less is imposed, a term of supervised release is not required but is optional, pursuant to § 5D1.1(b). Supervised release is required if the Court imposes a term of more than one year or when



required by statute, pursuant to §5D1.1(a).

Because the applicable guideline range is in Zone C of the Sentencing Table, Rojas is not eligible for probation, pursuant to §5B1.1, Application Note 2.

The fine range for the instant offense is from \$3,000 to \$30,000, pursuant to § 5E1.2. Subject to Defendant's ability to pay, in imposing a fine, the Court shall consider the expected costs to the Government of any imprisonment, probation, or supervised release pursuant to § 5E1.2(d)(7). The most recent advisory from the Administrative Office of the United States Courts suggests a monthly cost of \$2,270.93 to be used for imprisonment, a monthly cost of \$317.32 for supervision, and a monthly cost of \$2,063.19 for community confinement.

Pursuant to § 5E1.1(a)(1), in case of an identifiable victim, the Court shall enter a restitution order for the full amount of the victim's loss if such order is authorized under 18 U.S.C. § 3663A.

**The Remaining Factors of 18 U.S.C. § 3553(a)**

Having engaged in the Guidelines analysis, this Court

also gives due consideration to the remaining factors identified in 18 U.S.C. § 3553(a) in order to impose a sentence "sufficient, but not greater than necessary," as is required in accordance with the Supreme Court's decision in Booker, 543 U.S. 220, and the Second Circuit's decision in Crosby, 397 F.3d 103. Pursuant to all of the factors, it is determined that a sentence below the Guidelines range is warranted in the instant case. The instant offense occurred over the course of only a few months. When Rojas was confronted by law enforcement officials, he cooperated immediately and described in details, both orally and in writing, the credit card scheme, the co-conspirators, and the location of the machines used to make the counterfeit cards. The offense represents Rojas's first criminal conviction. Rojas, the father of two young children, is gainfully employed in the construction industry while enrolled part-time in college. In addition Rojas has been in compliance with the conditions of his bail. Finally, a home visit conducted by his probation officer verified that the address of record is an appropriate living environment, and therefore appropriate for home confinement. A non-custodial sentence would allow him to continue with work and school, as well as care for his family.

#### **The Sentence**

For the instant offense, Rojas will be sentenced to three years probation with a special condition of five months' home confinement.

Rojas is to report to the nearest United States Probation Office within seventy-two hours of the imposition of this sentence. It is recommended that he be supervised by the district of his residence.

As mandatory conditions of his probation, Rojas shall:

- (1) not commit another federal, state, or local crime;
- (2) not illegally possess a controlled substance;
- (3) not possess a firearm or destructive device;
- (4) cooperate in the collection of DNA as directed by the probation officer.

Pursuant to the Violent Crime Control and Law Enforcement Act of 1994, for offenses committed after September 13, 1994, the court shall require that all offenders on probation, parole, or supervised release submit to one drug test within fifteen days of commencement of probation, parole or supervised release and at least two drug tests thereafter for use of a controlled substance, unless ameliorated or suspended by the court due to its determination that the defendant poses a low risk of future substance abuse as provided in 18 U.S.C. §

3563(a)(5) and § 3583(d).

Defendant shall refrain from any unlawful use of a controlled substance. He shall submit to one drug test within fifteen days of placement on probation and at least two unscheduled drug tests thereafter, as directed by the probation officer.

Furthermore, the standard conditions of supervision (1-13) shall be imposed with the additional special conditions as follows:

Rojas shall comply with the conditions of home confinement for a period of five months. During this time he will remain at his place of residence except for employment and other activities approved by his probation officer. He shall maintain a telephone at his place of residence without call forwarding, a modem, caller ID, call waiting, or portable cordless telephones for the above period. At the direction of his probation officer, he shall wear an electronic monitoring device and follow electronic monitoring procedures specified by his probation officer. Home confinement shall commence on a date to be determined by the probation officer. Rojas shall pay the costs of home confinement on a self-payment or copayment basis as

directed by the probation officer.

Defendant shall obey the immigration laws and comply with the directives of immigration authorities.

In consideration of all the factors set forth in 18 U.S.C. § 3572(a), it does not appear that the Defendant is able to pay a fine, and so the fine in this case shall be waived. A special assessment of \$300, payable to the United States, is mandatory and shall be due immediately.

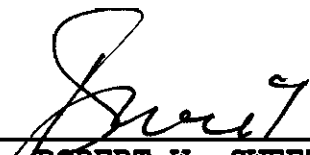
An Order of Restitution will be delayed for up to 90 days after the sentence is imposed in anticipation of receiving the necessary identifying information from the Government pursuant to the provisions of 18 U.S.C. § 3663(d)(5).

Rojas shall forfeit any property and proceeds derived from the offense to the United States.

The terms of this sentence are subject to modification at the sentencing hearing scheduled for June 8, 2010.

It is so ordered.

New York, NY  
June 8, 2010

  
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ROBERT W. SWEET  
U.S.D.J.